

Application No. 10/784,638

Docket No.: DP-307767

REMARKS

Claims 1-24 were pending. Applicants have added new claim 25, and amended claims 1-12, 14, 17, 20, and 23 to correct typographical errors and to further define the invention. Accordingly, claims 1-25 are now pending. The Examiner has rejected claims 1-8, 19-22, and 24 under 35 U.S.C. §103(a) as being unpatentable over Menard et al. (U.S. Patent No. 6,563,810), in view of either Hapka (U.S. Patent No. 5,619,412) or Issa (U.S. Patent No. 5,945,936). In addition, the Examiner has rejected claims 9-17 under 35 U.S.C. 102(e) as being anticipated by Menard. These rejections are respectfully traversed. Applicants respectfully request reconsideration of the pending claims in view of the preceding amendments and the following remarks.

Claim Rejections Under 35 U.S.C. §102

Claims 9-17 were rejected under 35 U.S.C. 102(e) as being anticipated by Menard. This rejection is respectfully traversed.

Independent claim 9, as amended, is directed to a method for incapacitating a vehicle that includes the steps of

receiving information into a control center; and
sending from said control center, by way of a wireless communication, a shut down command to an onboard computer mounted in said vehicle;

wherein said onboard computer is configured to initiate a shutdown sequence that places said vehicle in an idle mode.

Similarly, independent claim 17, as amended, is directed to a method for incapacitating a vehicle that includes the steps of

receiving a signal initiated by the vehicle driver;
checking the validity of the signal according to a predetermined protocol; and

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incapacitating the vehicle if the step of checking the validity of the signal violates the terms of the predetermined protocol, wherein said incapacitating step includes forcing the vehicle engine into an idle mode.

Contrary to the Examiner's assertion (Office Action, pages 5-7), Menard does not teach or suggest a method for incapacitating a vehicle wherein "an onboard computer is configured to initiate a shutdown sequence that *places said vehicle in an idle mode*", as required by claim 9, or wherein an "incapacitating step includes *forcing the vehicle engine into an idle mode*", as required by claim 17.

Rather, Menard discloses a system and method for providing network based communications in an emergency or security response system using a public safety answering point. (Menard, abstract; col. 1, lines 6-9). In one embodiment, a vehicle can be monitored by a website at a central station and remotely controlled in an emergency situation. For example, if a police officer is pursuing a vehicle, an operator from a central station, or the police officer, can disable the vehicle by transmitting a command from a website. As stated in Menard, "an electromechanical actuator coupled to a wireless transceiver may terminate the fuel flow, unpower the engine ignition system, or disable (or enable) any other system in the vehicle." (Menard, col. 9, lines 1-10). In other words, Menard teaches a method for disabling a vehicle by terminating the fuel flow, or by unpowering the engine ignition system. However, Menard does not teach or suggest incapacitating a vehicle by placing the vehicle in an idle mode, as required by claims 9 and 17. In fact, by terminating the fuel flow or unpowering the engine ignition system, the vehicle becomes completely inoperable. Indeed, it would be impossible for a vehicle to be in an idle mode if the fuel flow was terminated, or the ignition system was unpowered. Consequently, Menard cannot possibly anticipate claims 9 and 17, as amended. For at least this

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reason, independent claims 9 and 17, and dependent claims 10-16 and 18-25, are patentable over the cited art and in condition for allowance.

Claim Rejections Under 35 U.S.C. §103

Claims 1-8 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Menard in view of Hapka. This rejection is respectfully traversed.

Independent Claim 1

Independent claim 1, as amended, is directed to a vehicle disable system that includes an onboard computer linked to a communications system. The communications system is capable of communicating to a remote control center by way of a telecommunications link. The onboard computer "includes means for acting on a shutdown command from said call center, and means for interrupting a throttle command signal generated by a throttle position sensor." Applicants respectfully submit that Menard, either alone or in combination with Hapka, does not teach or suggest an onboard computer with a "means for interrupting a throttle command signal generated by a throttle position sensor," as required by independent claim 1.

As acknowledged by the Examiner (Office Action, page 2), Menard does not specifically disclose a means for interrupting a throttle command signal generated by a throttle position sensor, as required by claim 1. However, the Examiner contends that the Hapka reference cures the acknowledged deficiency in Menard because:

Hapka discloses a remote control system that allows a remote user to enable or disable an engine idle shutdown device 2 attached to the vehicle's engine 3. Specifically, the vehicle's device 2 includes an electronic control module 34 that monitors the throttle, clutch and service brake for activity and engine speed and change in engine idling activity. (Office Action, pages 2-3).

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In other words, the Examiner appears to be asserting that an electronic control module that monitors a throttle for activity and engine speed teaches a "means for interrupting a throttle command signal generated by a throttle position sensor." Applicants respectfully disagree and submit that the Examiner has misconstrued the teachings of Hapka.

Hapka discloses a system for remotely controlling an idle shutdown device on a vehicle. (Hapka, col. 4, lines 1-4). The system includes an electronic control module (ECM) that "monitors the throttle, clutch and service brake for activity and also monitors the vehicle and engine speed for any change in engine idling activity." (Hapka, col. 5, lines 7-10). If the vehicle operator does not use the throttle, clutch, or service brake within a programmed time, and no change in engine idle activity is detected, the idle shutdown device proceeds to shut down the engine. (Hapka, col. 5, lines 10-13). In other words, Hapka teaches at most a system to shut down an engine if the monitoring of various vehicle parameters yields no change in activity within a designated period of time. Indeed, Hapka is silent as to the manner in which the vehicle engine is actually shut down. Therefore, Hapka cannot possibly teach or suggest a "means for interrupting a throttle command signal generated by a throttle position sensor," as required by independent claim 1. For at least this reason, independent claim 1, and dependent claims 2-6, are patentable over the cited art and in condition for allowance.

Moreover, even if the combination of Menard and Hapka taught all of the limitations of independent claim 1, which as set forth above they do not, the Examiner has failed to state a *prima facie* case of obviousness with respect to claim 1. A *prima facie* case of obviousness requires that there be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. See MPEP § 2143; *In re Linter*, 458 F.2d 1013, 173 USPQ

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560, 562 (CCPA 1972). The Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art reference for combination in the manner claimed. *In re Rouffet*, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

The Examiner concedes that Menard fails to specifically disclose a means for interrupting a throttle command signal generated by a throttle position sensor, and contends that the foregoing limitation is taught by Hapka. Then, with no explanation, and no citation of any of the prior art of record, the Examiner simply states that

Since Menard discloses a system that disables the vehicle by unpowering the engine ignition system, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of including a throttle sensor, as disclosed by Hapka, to monitor the idling state of the vehicle prior to disabling the vehicle as a cautionary measure to allow the vehicle to come to a slow and safe stop without endangering the driver nor any nearby drivers. (Office Action, page 3).

Applicants respectfully submit that the Examiner has merely stated a perceived advantage of the claimed invention, not a suggestion or motivation to modify Menard to achieve the claimed invention. In fact, Applicants are unable to understand how "including a throttle sensor" in Menard, "to monitor the idling state of the vehicle prior to disabling the vehicle as a precautionary measure ..." teaches, suggests, or provides a motivation to combine Menard and Hapka to achieve "a means for interrupting a throttle command signal generated by a throttle position sensor", as required by claim 1. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness against independent claim 1. For at least this additional independent reason, claim 1 is patentable over the cited art and in condition for allowance. In addition, dependent claims 2-6, which depend from claim 1, are also in condition for allowance for at least the same reason.

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Dependent Claims 19-22

Claims 19-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Menard in view of Issa. This rejection is respectfully traversed.

As set forth above, Menard does not disclose all of the limitations as required by independent claim 17. The addition of Issa does not cure these deficiencies. Therefore, for at least the same reasons, dependent claims 19-22, which depend from independent claim 17, are also in condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection.

CONCLUSION

Reconsideration and allowance are respectfully requested. In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 65899-0670 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to such deposit account number.

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Respectfully submitted,

By 

Glenn E. Forbis

Registration No.: 40,610

RADER, FISHMAN & GRAUER PLLC

39533 Woodward Avenue

Suite 140

Bloomfield Hills, Michigan 48304

(248) 594-0636

Attorney for Applicant